

Postcard

ORIGINAL

"0"

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

FCC MAIL SECTION
JUN 21 9 27 AM '91

JUN 21 2 35 PM '91

AUDIO SERVICES
DIVISION

In Re Applications of)
DEAS COMMUNICATIONS, INC.)
LINDA D. BECKWITH)
DRAGONFLY COMMUNICATIONS, INC.)
Application For FM)
Construction Permit for New)
FM Channel 240A, 95.9 mHz)
Healdsburg, California)

RECEIVED BY
File No. 910208MB

File No. 910211MI

File No. 910211MA ✓

To: Chief, FM Branch,
Mass Media Bureau

OPPOSITION TO PETITION TO DENY

Dragonfly Communications, Inc., by its counsel, here opposes the Petition to Deny filed by William J. Smith ("Petitioner") on May 29, 1991. In Opposition the following is respectfully submitted.

1. Petitioner seeks the denial of three applications here because in varying degrees, they are said to present a degree of visual or other intrusion that Petitioner supposes would make them unfit for zoning approval. Petitioner fails to make his prima facie case as to any of these, but the case as to Dragonfly differs from the others because it is virtually non-existent.

2. Petitioner offers no discussion, and appears to have no idea where Dragonfly's proposed tower would be situated. He opposes the plan of Deas Communications, Inc. ("Deas") because it involves a parcel next to his (para. 2), and the plan of Linda D. Beckwith ("Beckwith") because it is on the next ridge (para. 2). Of Dragonfly he can only surmise that it is "probably" in direct

view of his property because it involves a lighted tower approaching 400 feet above ground level. That proposition is a non sequitur, and without more it establishes nothing. That Dragonfly's site "is" within view of an access road to his property (one of how many? At what remove?) does not establish any relevant, or even peripheral harm, and fails to confer standing.

3. Under Commission precedent, such a Petitioner must show, not merely that a proposal would need a variance, but that such variance would be unlikely to be granted, see Grace Broadcasting Systems, Inc. 48 RR 2d 936 (ALJ, 1980). The Commission generally leaves zoning issues to zoning authorities, and does not here litigate differences of opinion over whether non-conforming uses will be allowed, Sunshine Broadcasting, Inc., 61 RR 2d 386 (1986). Petitioner seeks to avoid this problem, through a bald misstatement of California law. He avers that Government Code Sec. 65860 "requires zoning decisions to be consistent with the General Plan..." (para. 12). However, the Statute in fact requires, not that decisions be consistent, but "county or city zoning ordinances shall be consistent with the general plan." Government Code Sec. 65860(a) [emphasis added]. Indeed the Court of Appeals has held that this section does not preclude issuance of permits that are inconsistent with the plans, Elysian Heights Residents Ass'n, Inc. v. City of Los Angeles (App 2 Dist, 1986), Cal. Rptr. 226, 182 C.A. 3d 21. Assuming, as Dragonfly does not concede, that its use is inconsistent with the Sonoma County General Plan,

such inconsistency demonstrates nothing about the proposal that need concern the Commission prior to grant.

3. Denial of the Fuller-Jeffrey Broadcasting proposal has no relevancy to Dragonfly's proposal. First, that action of the Board of Zoning Adjustments occurred on January 25, 1990, or a year and a half ago. There is no showing here that the composition of the Board is unchanged, or that material conditions remain the same. Secondly, Fuller Jeffrey was seeking to relocate, whereas Dragonfly is proposing a new facility. Thus Fuller Jeffrey had the virtually insurmountable problem of trying to show a lack of viable alternatives "including the applicant's existing location," as the Zoning Board resolution noted.

Finally, and from a standpoint of environmental intrusion, Fuller Jeffrey's tower would stand atop the ridge, whereas Dragonfly's is actually lower than the adjoining hillside. The comparisons, in feet, are:

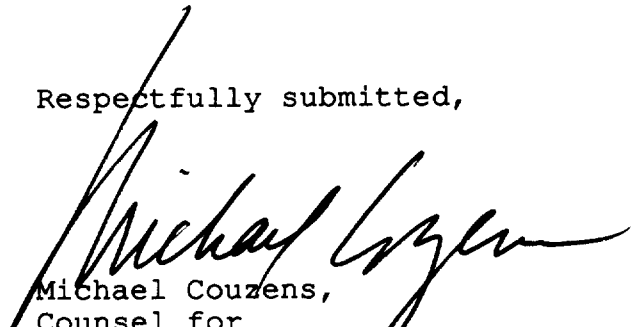
	Fuller	Dragonfly
Site AMSL	1200	637
Top of Tower AGL	404	390
Top of Tower AMSL	1604	1027

Indeed, it would appear that Dragonfly's proposed facility is not visible from Petitioner's home because of the obstruction provided by an intervening 1200 foot ridge.

4. In conclusion, Petitioner's perfectly valid, even laudatory concerns about environmental spoilation -- certainly valid concerns in burgeoning Sonoma County -- have gotten too far out front of judgment or law or facts here. Nothing has been demonstrated to interfere with normal processing of the three applications. Of the complaints, those against Dragonfly are the least defined and supported.

For these reasons the Petition should be denied.

Respectfully submitted,



Michael Couzens,
Counsel for
Dragonfly Communications, Inc.

Law Offices of Michael Couzens
P.O. Box No.33127
Washington, D.C. 20033

(415) 621-4030

Dated: June 21, 1991

CERTIFICATE OF SERVICE

I, Teresa Ferracci, certify that true copies of the foregoing
Opposition to Petition to Deny were served by first class mail,
postage prepaid, this 21st day of June 1991 to the following:

Chief, Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

William J. Smith, Esquire
P.O. Box 6655
Santa Rosa, CA 95406



Teresa Ferracci